No. 06-1006

IN THE

Supreme Court of the United States

UNIVERSITY OF PHOENIX,

Petitioner,

v.

UNITED STATES EX REL. MARY HENDOW AND JULIE ALBERTSON,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

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RULE 29.6 STATEMENT

The corporate disclosure statement included in the petition for a writ of certiorari remains accurate.

SUPPLEMENTAL BRIEF FOR PETITIONER

Respondents' eleventh-hour arguments in their supplemental brief do nothing to diminish the cert-worthiness of this case.

Respondents' contention that certiorari is unwarranted because University of Phoenix, Inc. ("UOP") has filed a motion to dismiss in the district court is both legally and factually unsound. As established in UOP's reply brief, this Court regularly grants review of cases that are in an interlocutory posture. Reply Br. 10. There is often a risk of mootness in such cases due to the ongoing lower-court proceedings. Respondents are thus essentially arguing that this Court should only review decisions that represent final judgments—which clearly is not this Court's practice. *Id.* Moreover, the hearing on UOP's motion to dismiss is not scheduled to take place before June 11, 2007 (Pet. Supp. App. 1a), which ensures that the disposition of that motion will not moot this Court's consideration of the petition for certiorari.

Respondents' suggestion—that this Court should disregard the fact that they are seeking more than a billion dollars in damages in this case—is inappropriate material for a supplemental brief because it does not concern "new cases, new legislation, or other intervening material not available at the time of" respondents' opposition brief. S. CT. R. 15.8. There was no impediment to respondents' raising that contention in their opposition brief. The settlement agreement between the Department of Education and UOP, which required UOP to make a $9.8 million payment, does not alter the fact that respondents are seeking more than a billion dollars in damages from UOP in this case and that, on that basis alone, this case is eminently worthy of this Court's consideration. *See Fid. Fed. Bank & Trust v. Kehoe*, 126 S. Ct. 1612, 1612 (2006) (Scalia, J., concurring in denial of certiorari). It does demonstrate, however, that respondents' requested False Claims Act damages are wholly out of propor-

tion to the alleged regulatory violations on which they would be premised.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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